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8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA
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11 THE ECLIPSE GROUP LLP, a California
12 limited-liability partnership,
13 Plaintiff,
14 v.
15 TARGET CORPORATION, et al.,
16 Defendants.
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Case No.: 15-CV-1411-JLS (BLM)

**ORDER DENYING WITHOUT
PREJUDICE JOINT MOTION TO
APPROVE SETTLEMENT**

(ECF No. 206)

18 Presently before the Court is the Parties' Joint Ex Parte Application to Approve
19 Settlement and Enter Final Judgment to Enforce Settlement, ("MTN," ECF No. 206).
20 Plaintiff The Eclipse Group LLP, Defendants Target Corporation and Kmart Corporation,
21 and Intervenor Stephen Lobbin, have settled this matter. The Parties request the Court
22 approve and enforce the settlement.

23 In December 2016, unrelated third party Burkhalter, Kessler, Clements & George
24 LLP ("BKCG") filed a Notice of Lien and Abstract of Judgment in this matter pursuant to
25 California Code of Civil Procedure § 708.410. (ECF No. 69.) Under California Code of
26 Civil Procedure § 708.440(a):

27 [U]nless the judgment creditor's money judgment is first satisfied
28 or the lien is released, the judgment recovered in the action or

1 special proceeding in favor of the judgment debtor may not be
2 enforced by a writ or otherwise, and no compromise, dismissal,
3 settlement, or satisfaction of the pending action or special
4 proceeding or the judgment procured therein may be entered into
5 by or on behalf of the judgment debtor, without the written
6 consent of the judgment creditor or authorization by order of the
7 court.

8 The statute also provides that the court may, “after a hearing,” make such an order
9 “that may include such terms and conditions as the court deems necessary.” Cal. Civ. Proc.
10 Code § 708.440(b). “The application for an order under this subdivision shall be made on
11 noticed motion. The notice of motion shall be served on the judgment creditor. Service
12 shall be made personally or by mail.” *Id.*

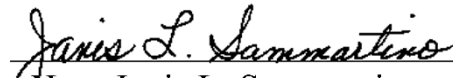
13 Federal Rule of Civil Procedure 69 requires that, in federal court, procedures for
14 execution of judgment “must accord with the procedure of the state where the court is
15 located, but a federal statute governs to the extent it applies.” Under California law, once
16 proper notice of a judgment lien is made, “[u]nless the judgment lien is first satisfied, no
17 settlement of the pending action may be entered into on behalf of the judgment debtor
18 without the written consent of the judgment creditor or authorization by court order.”
19 *Waltrip v. Kimberlin*, 164 Cal. App. 4th 517, 530–31 (Ct. App. 2008) (citing § 708.440);
20 *see also Grannan v. Alliant Law Grp., P.C.*, No. C10 02803 HRL, 2012 WL 216522, at *9
21 (N.D. Cal., Jan. 24, 2012) (“When the judgment debtor is entitled to money or property in
22 the pending action, either the judgment creditor or some other party must move for the
23 court to apply the debtor’s interest in satisfaction of the lien.”). “This rule was intended in
24 part to prevent a judgment debtor from entering into collusive agreements/settlements in
25 order to avoid the judgment creditor’s lien. A court need not approve a settlement, and the
26 settlement will be ineffective, if the court determines that there was collusion to evade a
27 judgment lien.” *Flores v. Jewels Mktg. & Agribusiness*, No. 1:07-CV-334 AWI DLB, 2010
28 WL 1486913, at *5 (E.D. Cal. Apr. 12, 2010) (citations omitted).

The Parties request the Court approve their settlement pursuant to California Code

1 of Civil Procedure § 708.440 but have not followed the rules of the statute. The present
2 motion is not a noticed motion, nor have the Parties requested a hearing date. Further, the
3 Parties have indicated they served counsel of record of BKCG by electronic mail. (MTN
4 7.) There is no indication counsel was served personally or by mail, as is required by
5 § 708.440(b). Finally, the Parties have not provided the Court with the settlement. They
6 indicate the settlement is confidential but they can provide it to the Court for an in camera
7 review. (MTN 2 n.1.) The Court cannot review the settlement for any evidence of
8 collusion if it does not have the document to review. The Parties may file the document
9 under seal to protect the confidentiality. For these reasons, the Court **DENIES**
10 **WITHOUT PREJUDICE** the Ex Parte Motion.

11 **IT IS SO ORDERED.**

12 Dated: August 7, 2018


13 Hon. Janis L. Sammartino
14 United States District Judge
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